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Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES, VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Supreme Court of the United States

OCTOBER TERM, 1970.

No. .....

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES, VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Petitioners, Cook County College Teachers Union, Local 1600, and Norman G. Swenson, President; David Simonson, Asst. to the President; Howard A. James, Vice President; Leon Novar, Member of Negotiating Committee, as Individuals, as Officers of said Union, and as Members and Representatives of the class of Members of said Union, hereby respectfully prays that a writ of certiorari issue to

review the decision of the Supreme Court of Illinois entered in this proceeding on October 5, 1970, denying Petitioners' Petition for Leave to Appeal and thereby affirming the judgment and opinion of the Appellate Court of Illinois, rendered and issued on June 26, 1970.

OPINION BELOW.

The Opinion of the Appellate Court of Illinois, is reported at 126 Ill. App. 2d 418; 262 N. E. 2d 125. The Decision of the Illinois Supreme Court denying the Petitioners' Petition for Leave to Appeal is not reported.

JURISDICTION.

The decision of the Supreme Court of Illinois denying the Petition for Leave to Appeal was entered on October 5, 1970. The opinion of the Appellate Court of Illinois affirming an Order of the Circuit Court of Cook County, Illinois, was entered on June 26, 1970. This court's jurisdiction is invoked under 28 U. S. Code § 1257 (3).

QUESTIONS PRESENTED.

1. Whether the First and Fourteenth Amendments to the United States Constitution protect the right to strike and to engage in picketing for collective bargaining purposes, by public employees employed by a County in the State of Illinois engaged in the operation of a junior college system pursuant to a statutory enabling act.

2. Whether the Fourteenth Amendment to the United States Constitution guarantees of due process and equal protection of the laws applies to public employees employed by a political subdivision of the State.

3. Whether an injunction, entered without notice and hearing, enjoining all concerted work stoppages, picketing

and related activities in support of collective bargaining by public employee teachers in a junior college system, solely because they are public employees, is violative of the equal protection and due process clauses of the Fourteenth Amendment, where under similar circumstances private employees could not be enjoined.

4. Whether the injunction of a State court prohibiting all strikes or concerted withholding of services by public employees violates the Thirteenth Amendment to the United States Constitution.

5. Whether the Petitioners, as public employees, could be held in contempt of an injunction which is void as an unconstitutional violation of the protections accorded by the First, Thirteenth and Fourteenth Amendments to the United States Constitution, and void as entered in violation of the Anti-Injunction Act of the State of Illinois.

6. Whether the courts of Illinois could retroactively declare a criminal contempt for violation of a labor injunction, where the law of Illinois at the time of the alleged contempt made contempt of a labor injunction a civil contempt, and provided that a finding of contempt will not lie if the contempt is moot at the time of its prosecution.

7. Whether the denial of a change of venue pursuant to Illinois statute is a denial of due process where the trial court indicates an intent to find a violation of its order prior to any hearing on the merits of the case and prior to the determination of any legal defenses raised by the Petitioners.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional and statutory provisions applicable to this case are set forth as follows:

The United States Constitution, Amendment I, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The United States Constitution, Amendment XIV, provides, in pertinent part, as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The United States Constitution, Amendment XIII, provides, in pertinent part, as follows:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The Illinois Anti-Injunction Act, Illinois Revised Statutes, Chapter 48, Section 2a, provides as follows:

> *2a. Issuance of injunctions prohibited.*] § 1. No restraining order or injunction shall be granted by any court of this State, or by a judge or the judges thereof in any case involving or growing out of a dispute concerning terms or conditions of employment, enjoining

or restraining any person or persons, either singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising, or persuading others so to do; or from peaceably and without threats or intimidation being upon any public street, or thoroughfare or highway for the purpose of obtaining or communicating information, or to peaceably and without threats or intimidation persuade any person or persons to work or to abstain from working, or to employ or to peaceably and without threats or intimidation cease to employ any party to a labor dispute, or to recommend, advise, or persuade others so to do.

The Illinois Change of Venue Act, Illinois Revised Statutes, Chapter 146, Section 1, provides as follows:

A change of venue in any civil suit or proceeding in law or equity, including proceedings for the exercise of the right of eminent domain, may be had in any of the following cases:

First—Where the judge is a party or interested in the suit, or his testimony is material to either of the parties to the suit, or he is related to, or shall have been counsel for, either party in regard to the matter in controversy. In any such case a change may be awarded by the court with or without the application of either party.

Second—Where either party shall fear that he will not receive a fair trial in the court in which the suit or proceeding is pending, because the inhabitants of the county are or the judge is prejudiced against him, or the adverse party has an undue influence over the minds of the inhabitants. In any such case the venue shall not be changed except upon application, as hereinafter provided, or by consent of the parties.

The Illinois Public Junior College Act, Illinois Revised Statutes, Chapter 122, Section 101-1 *et seq.*, including Section 103-1, provide, in part, as follows:

§ *101—1. Short title.*

This Act shall be known and shall be cited as the Public Junior College Act.

* * * * *

§ *103—1. Organization of class I junior college districts—Petition.*

Any contiguous and compact territory, no part of which is included within any common school district maintaining a junior college or any junior college school district, unless all of such district is included which has an equalized assessed valuation of not less than $75,000.00 and contains either a population of not less than 30,000 persons or at least 3 entire counties or that portion of 3 counties not included in an existing junior college district may be organized into a Class I junior college district within the State System.

STATEMENT OF THE CASE.

The Board of Junior College District No. 508, County of Cook (hereafter called "Board") operates junior colleges in the Chicago, Illinois area pursuant to a statutory enabling act, the Public Junior College Act, Illinois Revised Statutes, 1965, Chapter 122, § 101-1, *et seq.*

On October 7, 1966, in an election conducted by the American Arbitration Association, the full-time faculty members of the eight junior colleges under the jurisdiction of the Board voted overwhelmingly for representation by the Cook County College Teachers Union, Local 1600 (the "Union"). On October 10, 1966, the American Arbitration Association certified the election results to the Board, and on October 11, 1966, the Board extended formal recognition to the Union. Negotiations for a collective bargaining agreement ensued in October and November, 1966. (A. 3-4)

On November 30, 1966, the Board filed a Complaint for Declaratory Judgment and Injunction in the Circuit Court

of Cook County, Illinois, requesting a determination as to its obligation to bargain and demanding an injunction to prevent a strike. On that same date the Board requested and obtained a temporary injunction, *ex parte,* and without bond. (A. 1, A. 11-12) The injunction prohibits the Defendants from "participating in, or causing, inducing or encouraging, any strike or other concentrated withholding of service, or interference with the performance of service by any employee of plaintiff, or from picketing, parading or protesting at or in the vicinity of the junior college campuses maintained and operated by plaintiff for the purposes of inducing such strike or other concerted withholding of services." (A. 12)

On December 20, 1966, the Board moved the trial court to dissolve the temporary injunction alleging that the conduct restrained had been discontinued and that Defendants had disclaimed any intention of resuming such conduct. A Stipulation attached to the Motion to Dissolve stated that there was an agreement between the Board's negotiating committee and the Union's committee, whereby certain major terms of a contract were agreed upon and all issues then in dispute were resolved. (A. 13-15) The trial court refused to dissolve the injunction and instead instructed the Board's counsel to file a Petition for Rule to Show Cause. (A. 15-18) In various news articles published in the Chicago, Illinois newspapers of December 21, 1966, the trial judge is reported to have stated that recent similar instances "indicate too much coddling and not enough paddling." (A. 65) At the direction of the trial court the Petition for the Rule was presented to the court on December 21, and the Rule to Show Cause issued that same date. (A. 17)

The holidays intervened thereafter. On January 5, 1967, the Board's attorney petitioned the court for permission to withdraw from the case. On January 9, 1967, after the

court unsuccessfully solicited the States Attorney to prosecute the Rule, it appointed an Amicus Curiae and allowed the Board's attorney to withdraw. Defendants immediately filed a verified Petition for Change of Venue in accordance with the Illinois Venue Act, 146 Illinois Revised Statutes Section 1, alleging the prejudice of the trial judge. The Petition for Change of Venue was summarily denied. (A. 18-21; 22-23)

After numerous extensions of time during which an investigation was presumably conducted by the Amicus Curiae, a Report was issued and filed by him, recommending that the Defendants had violated the injunction order of the court. That same date the court considered the Report and ordered that an Amended Rule to Show Cause issue. Basically the Report and Amended Rule allege three violations of the injunction, namely, (1) the strike and picketing to December 5, 1966, of schools under control of the Board; (2) the speech of President Swenson of November 30, 1966, indicating picket lines would continue and that the faculty should remain absent from school; and (3) an alleged February 14, 1967, attempt to fine non-striking teachers. The Amended Rule restricted the hearing on contempt proceedings solely to the Union and Mr. Swenson. (A. 23; 26-33)

Immediately after the issuance of the Amended Rule, Defendants renewed their Petition for Change of Venue. (A. 33) The Petition was denied and the trial court refused to accede to Petitioners' request that the question of change of venue be referred to the Appellate Court of Illinois in accordance with Illinois Supreme Court Rule 308. (A. 33)

On April 24, 1967, the trial court ruled on Petitioner's Motion to Strike Complaint and Dismiss Action and Memorandum in support, and denied the Motion. The Motion

alleges *inter alia,* that the Complaint demands injunctive relief from engaging in activities protected by the Constitution of the State of Illinois, and by the First, Thirteenth and Fourteenth Amendments to the United States Constitution, and the Anti-Injunction Act of Illinois, Chapter 48, Illinois Revised Statutes, Section 2a. The Trial Court refused to refer the Motion to the Appellate Court as an interlocutory appeal under Illinois Supreme Court Rules. (A. 33)

An Answer to the Amended Rule was filed by the Petitioners on May 1, 1967. An Amended Answer to the Rule to Show Cause was filed in the trial court on May 12, 1967, alleging *inter alia* that the parties had entered into a contract containing a no-strike clause and arbitration procedure. (A. 33) A hearing on the contempt was held, and on May 23, 1967, the court found Mr. Swenson and the Union guilty of contempt of court. Mr. Swenson was sentenced to 30 days in jail and fined $1000.00, and the Union was fined $5,000.00. (A. 54)

On May 31, 1967, the trial court published its order finding the contempt of court, and stating that the contempt was intended to defeat and impair the rights of the Board. The court found that Swenson and the Union encouraged teachers to strike and picket in violation of its injunction order from November 30 to and including December 4, 1966, and at various times thereafter. (A. 57-58) On June 19, 1967, Petitioners filed a Motion for New Trial or to set Aside Punishment, which Motion was denied. (A. 59-65)

The trial court order was timely appealed to the Appellate Court of Illinois, First District. On June 26, 1970, the Appellate Court issued its Opinion affirming the trial court Order. On Appeal the Petitioners' asserted that the trial court order exceeded the trial court's jurisdiction because it was based on a void, temporary injunction; that the

injunction order was erroneous and no judgment of contempt could be predicated thereon; that the trial court erred in denying the petitions for change of venue; and that the contempt, if any, was a civil contempt under the laws of Illinois, and being moot, no punishment would lie therefor.

A Petition for Leave to Appeal from the Appellate Court was timely filed with the Supreme Court of Illinois asserting as a basis for the appeal the same issues raised in the appeal to the Appellate Court. On October 5, 1970, the Supreme Court denied the appeal without reasons.

HOW FEDERAL QUESTIONS WERE PRESENTED.

In proceedings before the trial court the Petitioners presented two Petitions for Change of Venue, prior to any hearing in the case. The petitions were based on the Illinois Venue Act, 146 Illinois Revised Statutes Section 1, and the prejudice of the trial court as evidenced by certain statements released by the court to the newspapers indicating a prejudgment of the case and asserting that there had been "too much coddling and not enough paddling" of teachers. Both Petitions were summarily denied. The denial of the Petitions constituted a denial of procedural and substantive due process in that the Petitions were denied contrary to the protections of Illinois statutes and deprived Petitioners of an impartial trial. The first Petition was presented after the trial court issued a Rule to Show Cause but prior to the date the Answer to the Rule was due, and prior to any participation by the Petitioners in the case. The second Petition was filed after an Amended Rule to Show Cause issued and prior to any hearing in the case. Petitioners moved that the trial court refer the question of change of venue to the Appellate Court of Illinois, but the trial court refused to do so. (A. 22-23; A- 33)

During the trial court proceedings the Petitioners also filed a Motion to Strike Complaint and Dismiss the Action, alleging *inter alia,* that the activities complained of were within the protections of the United States and State of Illinois Constitutions, and specifically the First, Thirteenth and Fourteenth Amendments to the United States Constitution. Petitioners also alleged that the demand for relief in the complaint contravened the Anti-Injunction Act of Illinois, 48 Illinois Revised Statutes, Section 2a, wherein it is provided that "No restraining order or injunction shall be granted by any court of this State . . . in any case involving or growing out of a dispute concerning terms or conditions of employment. . . ." The Motion was filed prior to any hearing on the contempt on April 21, 1967. The court denied the Motion and refused an interlocutory appeal to the Appellate Court of Illinois. (A. 33)

In its Answer to the Amended Rule to Show Cause the Petitioners affirmatively pleaded that the alleged conduct restrained by the temporary injunction had been discontinued and that Defendants had disclaimed any intention of resuming such conduct. In the Supplemental Answer, the Petitioners affirmatively pleaded that the Board and the Union had enterted into a collective bargaining agreement, thus mooting the question of any contempt.

The above defenses were again raised in the trial court by Motion for New Trial, Or, In the Alternative Motion to Set Aside and Commute Punishment. (A. 59-65) All Motions and Answers to the trial court were rejected by that court. Requests to the trial court to certify the question on appeal were denied by the court. (A. 65)

On appeal to the Appellate Court of Illinois, Petitioners raised the same defenses raised in the trial court, including the denial of change of venue as a denial of due process; that the injunction was unconstitutional and void in violation

of the protections of the First, Thirteenth and Fourteenth Amendments to the United States Constitution, or erroneously issued, and that Petitioners could not be held in contempt therefor; that the issuance of the injunction was beyond the jurisdiction of the court in that Illinois Statute, the Anti-Injunction Act, prohibits the issuance of an injunction in a labor dispute and that no contempt for violation of an injunction in excess of the jurisdicition of the court could be had; that the contempt was a civil contempt under the law of Illinois, and that being moot, no contempt would lie. The Appellate Court, in affirming the trial court order, ruled that whether the trial court rightfully or erroneously granted the temporary injunction and whether the temporary injunction order was constitutionally permissable are questions that cannot be litigated in a contempt proceeding, citing *Cummings-Landau Co.* v. *Koplin*, 386 Ill. 368, 54 N. E. 2d 462 and *City of Chicago* v. *King*, 86 Ill. App. 2d 340, 230 N. E. 2d 41. Thus, the court never determined the constitutionality of the injunction or the application of the Illinois Anti-Injunction Act. The Court similarly rejected the defense that the law of Illinois designated the contempt as civil and that such contempt is mooted by compliance with the court order, by finding that contempts are *sui generis* and may be determined as civil or criminal by the nature of the punishment imposed, *e.g.*, punitive or remedial punishment. In other words, the court determined that the nature of the contempt may be determined only subsequent to the punishment being imposed.

The Appellate Court determined that the petition for change of venue was untimely, in that it was presented after the trial court had indicated its views by denial of the motion to dissolve the temporary injunction. The Appellate Court failed to note that Defendants had not appeared in any trial court proceeding prior to the hearing on the Board's Motion to Dissolve Injunction, nor that

the prejudicial statements of the trial court occurred thereafter.

The same arguments raised in the trial and appellate courts were raised by the Petitioners in the Petition for Leave to Appeal from the Judgment of the Appellate Court of Illinois to the Supreme Court of Illinois.

The Petitioners argued in the Petition that:

(1) "Surely, the Defendants are entitled to have a case impartially tried by a court not concerned with "paddling" teachers. Respect for the law demands that those appearing before its courts be given every opportunity for an impartial trial. It was obviously for that very reason that the Venue Act became the law of this State and that the courts of this State have consistently liberally construed these provisions to promote the right for a change of venue.

(2) "The violation of an injunction in a labor dispute has invariably been found to be a civil contempt." "Thus, by the finding of criminal contempt herein, the Appellate Court overruled a long line of cases finding that the violation of an injunction order in a labor dispute is a civil contempt and that once such a contempt is mooted, no punishment may lie therefor. Determining the nature of the contempt only after the punishment has been imposed is a denial of due process.

(3) "Contempt may not lie, in Illinois, for violation of a void injunction nor for one erroneously issued. Here the injunction was void, as unconstitutional, or issued in violation of the Anti-Injunction Act."

The Supreme Court denied the Petition for Leave to Appeal on October 5, 1970, without comment.

REASONS FOR GRANTING THE WRIT.

Public employees throughout these United States are being sent to jail for seeking those rights of self-organization and collective bargaining that have been protected by the United States Constitution and by federal legislation for employees in the private sector for almost forty years. (National Labor Relations Act, 29 U. S. C. Sec. 151 *et seq.*; *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937); *Milk Drivers' Union of Chicago, Local 753* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287 (1941); *AFL* v. *Swing*, 312 U. S. 321 (1941).)

The instant case arises in the State of Illinois where there is no public employee collective bargaining law, and therefore, no provision for any alternative to strikes and picketing to enforce public employee demands for collective bargaining. *Peters* v. *South Chicago Community Hospital*, 44 Ill. 2d 20, 27 (1969). Thus, the public employee in Illinois must either strike or picket to obtain the minimal rights to negotiate with his public employer concerning his wages, hours, and working conditions, or must forego those rights pending some point in history when the State will afford him some remedy recognizing those rights.

In Illinois, either the public employee has constitutionally protected rights to strike and picket his public employer in furtherance of his objective of collective bargaining, or he has no rights. In 1965, the Illinois Supreme Court, in the matter of *Board of Education of Community Unit District No. 2* v. *Redding*, 32 Ill. 2d 567 determined that public employees employed by a school district had no rights to strike. The Illinois Supreme Court based its decision on the ancient theory of the sovereignty of the State, the employees becoming agents of the State to carry out its mandate. Thus, in Illinois the public employee is denied

the due process of law and equal protection of laws secured by his brethren in the private sector.

The United States Supreme Court has not yet ruled on the right of public employees to bargain collectively, or to strike, or to picket. Hence, public employees in Illinois are on the horns of the horrible dilemma of attempting to achieve a parity with other members of organized society at the risk of jail sentences and impossible fines, or foregoing their place in society and relegating themselves to a back seat as second class citizens. The practical effect of the second alternative is to relinquish forever their rights, because it is a recognized fact of our society that no accommodation will be made until the demand becomes so great that there is no alternative but for society to respond.

1. In the instant case the County of Cook, in Illinois, pursuant to a statutory enabling act, Public Junior College Act, Chapter 122, Illinois Revised Statutes 101-1 *et seq.*, was engaged in the business of administering a junior college system. There is no constitutional mandate requiring that the County make available junior colleges. The Complaint alleges that the Union, in furtherance of its legitimate objectives of collective bargaining threatened a strike. Accordingly, and in apparent reliance on the Illinois Supreme Court *Redding* decision, *supra,* the State circuit court issued an injunction, *ex parte,* prohibiting a strike and any picketing in furtherance thereof.

No rationale was assigned by the State circuit court for denying these public employees the right to strike or to engage in informational picketing. No allegation of other unlawful activity is assigned by the Complaint or by the trial court for the issuance of an injunction. Thus, the sole issue before the trial court was whether the rights of the public employee to strike and to picket were con-

stitutionally protected rights, and the trial court determined that issue adversely to the Petitioners.

The obvious alternatives that were then open to the teachers were to strike and to picket in the face of the prohibitions of the injunction with the expectation that their constitutionally protected rights would eventually be determined by this Court, or to forego the strike and picketing and litigate the issuance of the injunction in the hope that many years hence the United States Supreme Court would grant certiorari and determine the constitutional questions. Yet, this Court has found that the ability to exercise a protected protest at a time when such exercise would be effective must be as protected as the beliefs themselves (See *Dombrowski* v. *Pfister,* 380 U. S. 479 (1965) concerning the chilling effect of a prosecution upon First Amendment rights.) Here, under the second alternative, the ability to exercise a protected protest at a time when such exercise would be effective, would be effectively denied.

2. The right to strike and to engage in picketing is protected by the First and Fourteenth Amendments to the United States Constitution and may not be enjoined.

The basic principle that picketing is a form of free speech has most recently found expression in the civil rights cases. *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Cox* v. *State of Louisiana,* 379 U. S. 229 (1965). The only exception to the principle is the existence of a clear and present danger. This same principle of law was also enunciated in the leading Illinois case, *Centennial Laundry Co.* v. *West Side Organization,* 34 Ill. 2d 324 (1966).

There was no evidence of a clear and present danger in the instant case that would require the issuance of a temporary injunction order. Thus, under the decisions of the United States Supreme Court and under the decisions of the Illinois Supreme Court, there would appear to be no

basis for the issuance of the injunction in this case, unless the public employee assumed some status that made the constitutional protections inapplicable to him.

Similarly, the federal courts have afforded constitutional protection to the right to strike. *Traffic Telephone Workers Federation of New Jersey* v. *Driscoll,* 71 F. Supp. 681 (D. C., N. J., 1947); *Stapelton* v. *Mitchell,* 60 F. Supp. 5 (D. C., Kan., 1945).

The constitutional rights set forth above are individual rights which cannot be vitiated because they are being exercised against a government agency rather than a private concern. For these rights to be disregarded in the public sector, one would have to conclude that the concerted withholding of services from a public agency, regardless of the numbers of people involved, the duration, or the nature of the service supplied by the agency, automatically presents grave and immediate danger to the community. The conclusion would have no factual support in the allegations of the Complaint, nor, apparently, in the decision of the trial court granting the injunction, for both are based on the theory that such strike or picketing are *per se* unlawful and not a constitutionally protected right of the public employee.

3. The Fourteenth Amendment of the United States Constitution guarantees due process of law and equal protection of the laws and the issuance of an injunction in derogation of those rights is unconstitutional and the injunction is void.

The Fourteenth Amendment requires that the public employee be granted his constitutional and common law rights equally with all other persons. *United Public Workers of America* v. *Mitchell,* 339 U. S. 75 (1946); *Weiman* v. *Updegraff,* 344 U. S. 183 (1960); *Toraso* v. *Watkins,* 367 U. S. 488 (1960). This Court has held that teachers have

a right to join organizations without the approval of their employer, *Shelton* v. *Tucker,* 364 U. S. 479 (1960), and that public employees, although having no right to continued employment, may not be dismissed for engaging in activities constitutionally protected as to other citizens. *Pickering* v. *Board of Education,* 391 U. S. 563 (1968); *Keyishian* v. *Board of Regents,* 385 U. S. 589 (1967).

There is no rationale for denying the protections of due process and equal protection of the laws to the public employee, particularly where, as here, there is no alternative method of allowing such employees a remedy for the assertion of their employment rights. (*Truax* v. *Corrigan,* 257 U. S. 312, 329 (1921).) It should be noted that an increasing number of states have passed statutes providing for procedures and rights for unionization and collective bargaining by public employees, but not Illinois. (See Smith, State and Local Advisory Reports on Public Employment Labor Legislation; A Comparative Analysis, 67 Mich. L. Rev. 891 (1969).)

Furthermore, it should be noted that having no collective bargaining law, the invidious discrimination accorded the public employee extends to such employee in any and all employment capacities with the State, including any enterprises and business in which the State may wish to participate. Thus, the private sector employee may be engaged in parallel employment to the public employee, e.g., the college teacher in private and state schools, and yet have rights and benefits under the constitution far greater than the public employee and for no discernible difference in position in society. The discrimination is therefore arbitrary and capricious and may be invoked at the mere fiat of the State. Thus, constitutional protections presumably extended to all citizens become ephemeral at the whim of the State.

4. The injunction issued herein violated the Thirteenth Amendment to the United States Constitution, for if the court can prohibit a person from withholding his services from any particular employer that would create a condition of involuntary servitude. *Bailey* v. *State of Alabama,* 219 U. S. 219 (1911); *United States* v. *Reynolds,* 235 U. S. 133 (1914). Even assuming that the State would have the right to sever its relationship with an employee that no longer wishes to perform work, the opposite concept that the State has the right to force such employment is repugnant to our system of government. Accordingly the injunction that issued from the trial court should be void.

5. The Anti-Injunction Act of Illinois prohibits the court from issuing an injunction in any case involving or growing out of a labor dispute. (Illinois Revised Statutes, Chapter 48, Section 2a) There is no differentiation in the statute between public and private employees, nor indeed any reference to the nature of the employer involved in the labor dispute. There is no basis for determining that the Anti-Injunction Act was not applicable in the instant case. The prohibition on the State Courts is absolute.

In a very recent decision of the Illinois Supreme Court in the matter of *The County of Peoria* v. *Benedict,* No. 42160, ... Ill. 2d ..... (September Term, 1970), the Court held that the Anti-Injunction Act was applicable to employees employed by a county nursing home so that no injunction could issue enjoining their strike.

6. The constitutional arguments were raised in the trial court as Answers to the Rule to Show Cause in the contempt proceedings and by motion directed to the court. The trial court denied all such motions and failed and refused to consider the defenses raised in the Answers.

The Appellate Court, in affirming the trial court decision, asserted that the Illinois Anti-Injunction Act cannot be

construed to take away the jurisdiction of the circuit court to decide whether a temporary injunction will issue, and that, whether the injunction order was constitutionally permissible cannot be litigated in a contempt proceeding. The Appellate Court cited an Illinois Supreme Court decision and an Illinois Appellate Court decision, *Cummings-Landau Co.* v. *Koplin,* 386 Ill. 368; *City of Chicago* v. *King,* 86 Ill. App. 2d 340, for the later proposition. Other decisions of the Illinois Supreme Court and Appellate Courts are in conflict with those cited by the Appellate Court for the same proposition, and have never been overruled by the Illinois Supreme Court. See *Armour Grain Co.* v. *Pittsburgh, C., C. & St. L. R. R. Co.,* 320 Ill. 156 (1926); *County of DuPage* v. *Molitor,* 26 Ill. App. 232 (1960); *People* v. *White,* 8 Ill. App. 2d 428 (1956); *People ex rel. Morgan* v. *Mullihen,* 41 Ill. App. 2d 282 (1963), wherein the court held that contempt would not lie for violation of a void or erroneously issued injunction.

This Court considered the same question in the matter of *Walker* v. *City of Birmingham,* 388 U. S. 307 (1967), and found that the question of the validity of a city ordinance was not properly before it on the question of contempt for violation of a state court injunction issued pursuant to that ordinance. The Court held that the Alabama Supreme Court had never in any criminal contempt case entertained a claim of non-jurisdictional error, and that the petitioners were therefore clearly put on notice that they could not bypass the orderly judicial review of the injunction before disobeying it. The Court also found that there was no question of jurisdiction over the petitioner and the subject matter of the controversy when the injunction issued, and that the injunction was not transparently invalid nor did it have only a frivolous pretense to validity.

In the instant case unlike *Walker* the state courts had

neither jurisdiction over the subject matter nor the power to grant the relief on the particular matter before it, having been denied that power and jurisdiction by statute, the Illinois Anti-Injunction Act. In addition, unlike *Walker,* the injunction was transparently invalid because of the Anti-Injunction Act, and because of the clear violation of the protections accorded by the First, Thirteenth and Fourteenth Amendments to the United States Constitution. Finally, unlike *Walker*, this is a case of entrapment as the Anti-Injunction Act had divested the trial court of jurisdiction to decide the question, and, as under several prior State court rulings the validity of the injunction and the fact that it was erroneously issued could properly be raised in contempt proceedings.

It should be noted that the *Redding* decision, *supra,* of the Illinois Supreme Court, denying the right of public employees to strike never considered the question of the applicability of the Anti-Injunction Act, and never considered the Anti-Injunction Act as a defense in a contempt proceeding. Those questions were first considered by the Illinois Supreme Court in the recent case of *The County of Peoria* v. *Benedict,* No. 42160 (September 1970), where the Court held that the Anti-Injunction Act was applicable to public employees at a nursing home but no defense in a contempt proceeding. To date the *Benedict* and *Redding* decisions have not been reconciled.

Surely the Petitioners could properly rely on the Anti-Injunction Act and the constitutional protections in violating the injunction of the trial court. The alternative proposition would require the Petitioners to honor an injunction unlawful under Illinois law, particularly in view of the *Benedict* decision, and under the United States Constitution, with no more than the hope that after years of expensive and extensive litigation their rights might finally

be declared. Hopefully, this Court, in the *Walker* decision, did not contemplate such blatant disregard of a legislative enactment and the constitutional rights of individuals by a trial court in issuing an injunction, nor did the *Walker* case contemplate investing the trial court with such absolute and extensive powers to deny due process.

7. Under Illinois law the violation of an injunction in a labor dispute has invariably been found to be a civil contempt. *O'Brien* v. *People,* 216 Ill. 354 (1905); *Daniel Boone Woolen Mills* v. *Laedike,* 238 Ill. App. 92 (1925); *Cory Corp.* v. *Fitzgerald,* 335 Ill. App. 579 (1948). As the Appellate Court of Illinois stated in *Cory Corp., supra* at pages 591-2:

> ". . . In a number of jurisdictions the violation of an injunction against interference with a complainant's employees is held to be a criminal contempt, but in Illinois it is denominated a civil contempt . . ."

Furthermore, under Illinois law, where the civil contempt has become mooted, or the party seeking the contempt is satisfied, the contempt proceedings must come to an end. (*Mazzio* v. *Zeitz,* 333 U. S. 56 (1947); *Eastman* v. *Leman,* 213 Ill. App. 364, 368-369 (1919); *Gariepy* v. *Gorman,* 16 Ill. App. 2d 584 (1958).) Here, the Board, as Plaintiff, did not seek to prosecute the contempt and the alleged contempt was mooted at the time of its prosecution there being no violation of the injunction. Nevertheless the trial court pursued the contempt and the Illinois Appellate Court affirmed the punishment imposed. The Illinois Supreme Court denied leave to appeal from the Appellate Court decision.

The Appellate Court based its affirmation of the trial court decision on a finding that the nature of the contempt may be determined by the punishment imposed. Thus, under the reasoning of the Appellate Court, in this instance

the contempt being mooted, the trial court must have punished as for a criminal contempt. The Petitioners asserted before the Appellate Court and the Illinois Supreme Court that such retroactive application of judicial law to create a crime where none previously existed was a denial of due process.

In *Bouie* v. *City of Columbia,* 378 U. S. 347 (1964), this Court held that judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness. The Court likened the judicial act to the creation of an *ex post facto* law prohibited by Article I, Section 10 of the Constitution, and stated that:

> "The fundamental principle that the required criminal law must have existed when the conduct in issue occurred must apply to bar retroactive criminal prohibitions emanating from courts as well as from legislatures." (at page 354)

Applying the principle in *Bouie* to the instant case, the court could not make violation of an injunction a criminal act, *i.e.,* a criminal contempt (*Bloom* v. *Illinois,* 391 U. S. 194 (1968), where before the act was committed such contempt was consistently held to be a civil contempt remedied by compliance with the order of the court.

Although the Appellate Court found that the contempt proceeding is *sui generis,* Illinois courts invariably determine whether the contempt is civil or criminal and have invariably determined that the contempt of an injunction in a labor dispute is a civil contempt. The *ex post facto* finding of criminal contempt for violation of a labor injunction has the effect of making a crime what was not a crime when the act was committed and offends the right of due process.

8. Petitioners were entitled to a change of venue under Illinois law upon the filing of a petition for change of venue, in accordance with Illinois Revised Statutes, Chapter 146, Section 1. In the instant case the Petition for Change of Venue was initially filed when the trial court indicated that there was "too much coddling and not enough paddling" in similar cases, and indicated an intent to pursue the contempt proceedings. The petition was filed prior to any participation by the Petitioners in the merits of the case.

This court has stated that to perform its function in the best way "justice must satisfy the appearance of justice". *In Re Murchison,* 349 U. S. 133, 136 (1960). The trial must be held by a tribunal not biased by interest in the event. *Fay* v. *New York,* 332 U. S. 261, 288 (1947). It is evident that the change of venue provisions in Illinois statutes were enacted for the very purposes enunciated by this Court, (*Roherty* v. *Green,* 57 Ill. App. 2d 362 (1965).) Accordingly, the Petitioners were denied a fair trial by the denial of the petition for change of venue, and this denial of due process requires that the finding of contempt be reversed.

CONCLUSION.

The injunction on which the finding of contempt was based was issued in the face of an Illinois statute specifically prohibiting the issuance of injunctions in labor disputes. The injunction was issued in the face of protections accorded by the First, Thirteenth and Fourteenth Amendments to the United States Constitution. The contempt proceedings emanating from the alleged breach of the injunction were *ex post facto* characterized as criminal contempts and constituted the creation of a judicial crime after the act giving rise to the alleged contempt. The trial

court pursued the contempt after the filing of a petition for change of venue alleging statements of the trial court indicating an intent to punish, and prior to any hearing in the contempt or any determination as to the defenses of the Petitioners.

This case arises in the public employee sector where there is little or no law protecting the rights of this large segment of our society. It is respectfully urged that this Court examine the rationale underlying the special prohibitions applicable to public employees and that it issue a writ of certiorari to review the decision of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX A.

IN THE CIRCUIT COURT OF COOK COUNTY.

COUNTY DEPARTMENT, CHANCERY-DIVORCE DIVISION.

BOARD OF JUNIOR COLLEGE DISTRICT No. 508, COUNTY OF COOK AND STATE OF ILLINOIS, *Plaintiff,* *vs.* COOK COUNTY COLLEGE TEACHERS UNION LOCAL 1600, *et al.,* *Defendants.*	No. 66 CH 7092.

ORDER.

This cause coming on to be heard on the Amended Rule to Show Cause heretofore filed herein and the answer of the respondents filed thereto, and the respondent, Cook County College Teachers Union, Local 1600 appearing by counsel and the respondent Norman G. Swenson, appearing in person as well as by counsel, and the Court having jurisdiction of the subject matter and the person of the parties hereto, and having heard all the testimony offered and the arguments of counsel,

DOTH FIND:

1. On November 30, 1966, plaintiff, Board of Junior College District No. 508 of the County of Cook and State of Illinois, after filing its complaint for declaratory judgment

and injunction, the court on motion of plaintiff and the testimony offered in support thereof, did enter a temporary injunction order and caused to issue an injunction restraining and enjoining Norman G. Swenson, David Simonson, Howard A. James and Leon Novar and all other persons in active concert and participation with them, and each of them, until the further order of court, from participating in, or causing, inducing or encouraging any strike or other concert, withholding of service, or interference with the performance of service by any employee of the above named plaintiff, or from picketing, parading, or patrolling at or in the vicinity of the Junior College campuses maintained and operated by the plaintiff, for the purpose of inducing such strikes or other concerted withholding of service.

2. Subsequent to the issuance of said injunction by this court, the respondent, Cook County College Teachers Union Local 1600, through its duly authorized officers and respondent, Norman G. Swenson, individually and as president of the Cook County College Teachers Union Local 1600, all of the members of which were teachers duly assigned to various educational institutions under the control of the plaintiff, Board of Junior College District No. 508, and included in the injunction order of this court, for the purpose of causing and inducing said teachers in violation of the injunction of this court, to strike, withhold their respective services, interfere with the performance of services and to picket in the vicinity of the various college campuses maintained and operated by the plaintiff knowingly commenced and continued from November 30, 1966, a course of conduct intentionally calculated to destroy and defeat the purpose of the order and injunction of this court and to coerce the plaintiff to yield to the demands of the defendants; and, in furtherance thereof, committed each of the following acts:

(a) Did, on the evening of November 30th, 1966, cause approximately 400 of the teachers employed by the plaintiff, Board of Junior College District No. 508, to assemble at the Water Tower Inn, located at 800 North Wabash Avenue, Chicago, Illinois, and in the presence of all the news media serving Cook County, Illinois, did make various promises and inducements to the assembled teachers to violate the injunction of this court and in particular, respondent, Norman G. Swenson did publicly state concerning the injunction of this court on November 30, 1966, "the court injunction is a typical union busting device. We will not return to work Thursday, Friday, or next Monday, and not until we get a binding collective bargaining agreement from the college board. The picket lines will continue and I and the other members of the union bargaining committee are ready to go to jail if necessary."

And, further, the respondent, Norman G. Swenson did further state "that the strike then in progress would continue with the plaintiff, Board of Junior College District No. 508, until it would give a written commitment and execute a binding, collective, bargaining agreement."

3. On December 21, 1966, said respondent Norman G. Swenson, in a news bulletin to all the members of the Cook County College Teachers Union Local 1600, did state: "Our Board miscalculated and thought we would be broken by an injunction. Now Judge Covelli has taken the position that we shall be punished in spite of the fact that the Board's attorneys sought dissolution of the injunction. It is unheard of for a judge to refuse to dissolve an injunction when the complaining party assures the court that the matter is settled.

"What can we do to help the Union and blunt the effect of this vindictive attack?

1. Write or phone Judge Covelli, Mayor Daley, Dr.

Taylor, and the Chicago newspapers expressing your indignation.

2. Attend the General Membership meeting January 2 and help formulate the Union's response to this attack.
3. Join the four members of the Union's Negotiating Committee when they appear in Covelli's Court on January 16.

If you have further questions, please contact your Union representative for information. I wish each of you a restful holiday.

Fraternally,

/s/ NORMAN G. SWENSON,
Norman G. Swenson,
President."

4. That each and all of the acts set forth herein were intentionally committed by the respondents while said injunction continued in full force and effect, and that as a direct and proximate result of the action of the respondents, numerous teachers in the employ of the plaintiff, did refuse to perform their duties and with numerous other persons formed picket lines at each of the schools under the control of the plaintiff and contained in the injunction of November 30, 1966, and said acts did continue at numerous places and times from November 30, 1966 to and including December 4, 1966, and at various times thereafter.

The Court Further Finds that said respondents have otherwise expressed and shown their defiance of this court and the aforesaid writ of injunction and no sufficient cause is shown by the respondents, or either of them, why they should not have complied with the aforesaid injunction and although able so to do, respondents have wilfully failed and refused to obey the injunction of this court.

The Court Further Finds and Adjudges each of said Respondents, Cook County College Teachers Union, Local 1600 and Norman G. Swenson, to be guilty of contempt of this court and said contempt was intended to defeat and impair the rights of the plaintiff herein and inspire distrust in the authorized, compelled action of this court, in temporarily staying the acts of the defendants named in plaintiff's complaint, including the respondents herein, thereby prevent irreparable injury to the plaintiff, Board of Junior College District No. 508, and the student body thereof, until the issues contained in plaintiff's complaint could be lawfully determined.

It Is Therefore Ordered that the respondent, Cook County College Teachers Union, Local 1600, is hereby fined the sum of Five Thousand ($5,000.00) Dollars.

It Is Further Ordered that the respondent, Norman G. Swenson, be and he is hereby fined the sum of One Thousand ($1,000.00) Dollars, and he is hereby committed to the Common Jail of Cook County, for a period of thirty days there to remain charged with said contempt for the period of the said 30 days, and until said fine assessed against him, the said Norman G. Swenson, shall be paid or until said respondent, Norman G. Swenson is released by due process of law; and, that a warrant for such commitment issue instanter directed to the sheriff of Cook County, Illinois, to execute.

It Is Further Ordered that bond in the sum of $1,000.00 be set for appeal and that the posting of said bond act as a supersedeas herein.

JUDGE COVELLI.

May 31, 1967.

APPENDIX B.

IN THE APPELLATE COURT OF ILLINOIS

First District.

No. 52465

BOARD OF JUNIOR COLLEGE DISTRICT No. 508, COUNTY OF COOK AND STATE OF ILLINOIS,
Plaintiff-Appellee,
vs.
COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,
and
NORMAN G. SWENSON, President; DAVID SIMONSON, Asst. to the President; HOWARD A. JAMES, Vice President; LEON NOVAR, Member of Negotiating Committee, as Individuals, as Officers of said Union and as Members and Representatives of the class of Members of said Union,
Defendants-Appellants.

Appeal From Circuit Court, Cook County.

Honorable Daniel A. Covelli, Presiding.

MR. JUSTICE LEIGHTON Delivered the Opinion of the Court:

This appeal is from an order finding defendants Cook County College Teachers Union, Local 1600 (hereafter called Union) and its president, Norman G. Swenson, guilty of contempt of court and imposing sentences of $5,000.00 fine on Union, $1,000.00 fine and 30 days in jail on Swenson.

For reversal, defendants contend that (1), the order exceeded the trial court's jurisdiction because it was based on a void temporary injunction; (2), the injunction order was erroneous; therefore, no judgment of contempt could be predicated on it; (3), the trial court erred in denying their petition for change of venue; (4), the trial judge arbitrarily selected defendant Swenson for punishment solely because he was president of Union; (5), much of the evidence was erroneously admitted, over objection and to defendants' prejudice; and (6), they were not proven guilty of contempt as required by law.

After this appeal was docketed, two labor organizations: Chicago Federation of Labor and Industrial Union Council (AFL-CIO), Joint Council No. 25, International Brotherhood of Teamsters, etc., were granted leave to appear as *Amici Curiae,* seeking reversal. In their brief, the *Amici* argue a point which forms one of defendants' arguments: that the trial court erred in denying Board's motion to dissolve the temporary injunction.

Plaintiff in this controversy, Board of Junior College District No. 508, County of Cook (hereafter called Board), operates junior colleges in the Chicago area under the authority of the Public Junior College Act, Ill. Rev. Stat. 1965, ch. 122, secs. 101-1, *et seq.* In November 1966, Board had eight campuses, a total enrollment of about 34,505 students and a full-time teaching staff of approximately 665 teachers. By statute it was Board's duty to appoint teachers, determine their salaries, establish tenure, provide for teacher removal for cause, prepare and adopt budgets to administer the colleges on its campuses. On October 11, 1966, Board recognized Union as the exclusive representative of the full-time faculty with academic rank employed by Board, except deans, assistant deans, and central administration employees. Thereafter, Board and Union, through

committees, began negotiations for a collective bargaining agreement.

November 30, 1966 Board filed a complaint for declaratory judgment and injunction alleging that Union and its members were threatening Board with a strike or concerted withholding of services, illegal acts which would violate the public policy of the state. Board prayed for a decree declaring that Union and its members could not advocate, induce or encourage any employee of Board to strike or engage in concerted withholding of services from Board in support of Union's proposals or to picket Board for the purposes of inducing a strike or withholding of services. On Board's application the day suit was filed, a temporary injunction issued restraining Union "[f]rom participating in, or causing, inducing or encouraging, any strike or other concerted withholding of service, or interference with the performance of service, by any employee of plaintiff, or from picketing, parading or patrolling at or in the vicinity of the junior college campuses maintained and operated by plaintiff for the purposes of inducing such strike or other concerted withholding of services."

Defendant Swenson knew of the injunction order the day it issued, although he did not receive or see a copy of it. That evening, November 30, Union held a meeting of its membership attended by more than 400 of Board's faculty. Swenson spoke. Members of Union, employees of Board, went on strike November 30 and picketed Board's campuses December 1 and 2, 1966 and on January 6, 1967. During this period, Swenson was seen either picketing or at the scene of picketing of Board's offices or campuses.

December 20, 1966, the attorney who represented Board moved to dissolve the temporary injunction. With the motion was presented a written stipulation between Board and Union which purported to settle their dispute. The

trial judge refused to grant Board's motion. Instead, he directed Board's attorney to prepare and file a petition for a rule on Union, Swenson and its other officers to show cause why they failed to comply with the temporary injunction. The petition was filed December 21; and a rule issued that day.

January 3, 1967 the attorney for Board filed a petition alleging that because Board had requested dissolution of the temporary injunction and the trial judge had ordered a petition for a rule on Union and its officers, he was placed "in a position of potential conflict of interest" which required appointment by the court of special counsel to present evidence in support of the rule. The court took the petition under advisement until January 9.

In the meantime, the trial judge requested but the State's Attorney of Cook County declined to proceed with the rule against Union and its officers, saying it was a civil matter. Then on January 9, 1967, the trial judge appointed John P. Coghlin, a member of the Illinois Bar, *Amicus Curiae* to investigate and report the facts and circumstances surrounding the conduct of Union and its officers "[c]oncerning any violation of the injunction of this court entered on November 30, 1966." The *Amicus Curiae* was directed to make a recommendation "[i]n connection herewith, to dismiss the rule to show cause heretofore entered or for leave to file such amendments thereto as he believes necessary."

On April 3, 1967 the *Amicus Curiae* filed a written report in which he recommended that an amended rule issue only against Union and Swenson "ordering and directing that they and each of them answer said amended rule to show cause within a date to be fixed by the court." The rule issued on April 3, returnable May 22, 1967. On May 1 defendants answered the rule. Then, on May 12 defendants

were allowed to amend their answer to include allegations that, effective January 1, 1967, the parties entered into a collective bargaining agreement to expire December 31, 1968. On May 22, 1967, the court heard the testimony of four witnesses called by the *Amicus* who, in addition, offered ten exhibits which were admitted. Defendants did not present any evidence. At the conclusion of the hearing, Union and Swenson were found guilty of contempt.

This finding, defendants contend, must be reversed because it was based on an unconstitutional and void temporary injunction. To support this contention defendants, with forcefulness and in great detail, raise questions concerning the sufficiency of the pleadings, Article II of the Illinois Constitution, the provisions of the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and which require construction of the Illinois Anti-Injunction Act, Ill. Rev. Stat. 1965, ch. 48, sec. 2(a).

Despite the vigor with which they are urged, these questions are not before us. The trial court had jurisdiction over the cause because the complaint alleged facts which presented a justiciable matter. Ill. Rev. Stat. 1965, Const. Art. 6, Sec. 9. In this day, the Illinois Anti-Injunction Act cannot be construed to take away the jurisdiction of a circuit court to decide whether a temporary injunction shall issue. Whether the trial court rightfully or erroneously granted the temporary injunction, and whether the injunction order was constitutionally permissible are questions that cannot be litigated in a contempt proceeding. *Cummings-Landau Co.* v. *Koplin,* 386 Ill. 368, 54 N. E. 2d 462; *City of Chicago* v. *King,* 86 Ill. App. 2d 340, 230 N. E. 2d 41 and cases there cited. Therefore, since the trial court had jurisdiction of the subject matter and of defendants, the questions defendants can raise in this appeal are whether the order finding them guilty of contempt is supported by

evidence and whether it conforms to those rules of law which govern such proceedings.

Before considering these questions we will resolve the point urged by defendants and by the *Amici Curiae*: that the trial court erred in denying Board's motion to dissolve the temporary injunction.

Defendants support this point with the argument that the controversy between the parties "[w]as clearly a labor dispute to which the injunction was directed . . ."; that Board, the party that obtained the original injunction order, was fully satisfied and waived its right to seek punishment for contempt. The *Amici* support this point with the argument that when Board returned to the trial court to obtain dissolution of the injunction order, defendants' contemptuous conduct had ceased. The *Amici* tell us that for the purpose of this argument we "[m]ay assume that: (1) Swenson and the Union knowingly violated the trial court's temporary injunction; and (2) the picketing violated Illinois law." These arguments are to the same effect; namely, that the contempt was moot at the time of its prosecution and that the contempt was strictly civil in nature. This is a concession with which we do not agree.

"Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither. They may best be characterized as *sui generis,* and may partake of the characteristics of both." *People ex rel. Chicago Bar Association* v. *Barasch,* 21 Ill. 2d 407, 409, 173 N. E. 2d 417. It is generally said that criminal contempts are acts disrespectful of a court or its process, those which tend to bring a court into disrepute or obstruct the administration of justice. *People* v. *Redlich,* 402 Ill. 270, 277, 83 N. E. 2d 736. The line of demarcation between criminal and civil contempt proceedings is in many instances indistinct and even imperceptible. *People* v. *Gholson,* 412 Ill. 294, 298-299, 106 N. E. 2d 333. However, a useful test by which a civil con-

tempt can be distinguished from a criminal one is the punishment imposed. When punishment is purely punitive: imprisonment for a definite term, fine for a certain sum of money, the contempt is said to be criminal. When punishment is a remedial or coercive measure: commitment of a contumacious party until he complies with the mandate of the court, a fine until there is obedience to the court's order, the contempt is said to be civil. *People* v. *Redlich, supra*; *Walsh* v. *Superior Oil Co.,* 50 Ill. App. 2d 40, 199 N. E. 2d 428.

In the case before us no coercive order was issued for the benefit of plaintiff; no request for the contempt proceedings was made by Board. The trial judge, in the exercise of his discretion, directed issuance of the rule in order to determine if defendants had willfully violated a duly issued court order. Punishments the court imposed were fines in sums certain and imprisonment of Swenson for a definite period. Thus, by the test of the cases, the proceedings were to determine whether defendants were guilty of criminal contempt of court. Their guilt had to be established beyond a reasonable doubt. *People* v. *Panczko,* 20 Ill. 2d 237, 170 N. E. 2d 130.

Arguments pressed on us by defendants and by the *Amici* insist that the rule to show cause should never have issued and that defendants' conduct should have gone unpunished because Board's broad discretion "[t]o say what is best for the successful management and conduct of the schools . . ."; and its decision to overlook defendants' conduct (assumed arguendo to be contemptuous and illegal) should have been honored by the trial court. We think these arguments lack substance. Under no theory can a party that obtains an injunction bind the issuing court with condonation of contemptuous or illegal acts of those who violate the court's order. To give effect to such a theory would usurp the highest function of our courts.

> "The rule of law . . . reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. This court cannot hold that the [defendants] were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the [defendants'] impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." *Walker* v. *City of Birmingham,* 388 U. S. 307, 320-321, 87 S. Ct. 1824, 18 L. Ed. 2d 1210 (1967).

We are aware of the contemporary social problems presented by questions concerning the right of public employees to unionize. See Comment, Collective Bargaining for Public Employees, etc., 68 Mich. L. Rev. 260 (1969); Bruff, *Unconstitutional Conditions Upon Public Employment, etc.,* 21 Hastings L. Jour. 129 (1969); Burton & Krider, *The Role and Consequences of Strikes by Public Employees,* 79 Yale L. Jour. 418 (1970). However, as judges we must remind teachers and public employees that the interests of unionism do not justify standing in defiance of law. If we do not do this, and if contemptuous and illegal conduct by teachers were condoned, either by school boards or by courts meekly acceding to requests made under pressure, there would be erosion and ultimately destruction of the high place in public esteem that unions enjoy in our society. Therefore, we conclude that the trial judge did not err in issuing the rule to show cause and appointing the *Amicus Curiae. People* v. *Goss,* 10 Ill. 2d 533, 141 N. E. 2d 385.

Defendants contend that they were prejudiced by the refusal of the trial court to grant their verified petition for change of venue. They argue that a change of venue was a right to which they were entitled; and that the petition

they filed was timely. Necessarily, to pass on this contention we must look to what transpired in the case before the petition was filed.

Defendants appeared in the trial court on December 20, 1966. On that day the trial judge refused to grant plaintiff's motion to dissolve the temporary injunction, a motion made by stipulation of the parties. The trial judge decided that a rule to show cause should issue against defendants. On his instructions, the attorney for Board presented the rule the next day, December 21. On January 3, 1967, the attorney for Board filed a petition for the appointment of special counsel. The court took this petition under advisement and requested the State's Attorney of Cook County to proceed with the rule against defendants. When this proved unsuccessful, the trial judge on January 9 decided to appoint the *Amicus Curiae.* January 12, as defendants say in their Abstract of Record, "[a]s soon as defendants learned the identity of the prosecutor . . ." of the rule, they filed a petition for change of venue alleging they feared the trial judge was prejudiced against them. They alleged that "[s]aid prejudice first came to the knowledge of these Petitioners on December 20, 1966." Thus, 23 days after the prejudice of the trial judge came to their attention, and after three important rulings in the cause: denial of the motion to dissolve the temporary injunction, issuance of the rule to show cause and appointment of the *Amicus Curiae,* defendants filed the petition for change of venue, a petition they renewed three months later on April 12, 1967.

A petition for change of venue must be made at the earliest practicable moment. *Comrs. of Drainage Dist.* v. *Goembel,* 383 Ill. 323, 50 N. E. 2d 444; *Hassell* v. *Backers,* 341 Ill. App. 290, 93 N. E. 2d 521. If filing of the petition is delayed until rulings on substantive issues have been

made, it comes too late. *People* v. *Lawrence,* 29 Ill. 2d 426, 194 N. E. 2d 337; *Pilgrim H. Church* v. *First Pilgrim H. Church,* 115 Ill. App. 2d 448, 252 N. E. 2d 1; *Barnes* v. *Peoples Gas Light & Coke Co.,* 103 Ill. App. 2d 425, 243 N. E. 2d 855. For example, a petition comes too late when it is presented after denial of a motion to strike the complaint. *Swanson* v. *Randall,* 30 Ill. 2d 194, 195 N. E. 2d 656. It would appear, therefore, that a petition for change of venue comes too late when it is presented after denial of a motion to dissolve a temporary injunction, a ruling certainly as substantive as denial of a motion to strike. That the court's denial of the motion to dissolve is considered substantive by defendants, themselves, is demonstrated by the fact that a major point in their brief in this court is devoted to the contention that this ruling was reversible error. We conclude that defendants' petition for change was untimely. It was filed long after the trial judge indicated his views concerning the necessity of proceedings to determine whether defendants were guilty of contempt of court. Under these circumstances, there is no merit to the contention that reversible error was committed when defendants' petition and its later renewal were denied.

Nor is there merit to the contention that Swenson was arbitrarily singled out for punishment. Defendants point out that the amended rule, in contrast with the original one, was directed against Union and only one individual, Swenson. It is said that this produced an invidious result: singling out Swenson solely because of his position as president of Union, not because of what he did.

A court that grants an injunction is clothed with wide discretion in enforcing obedience to its order. *Ash Co.* v. *Garment Workers' Union,* 290 Ill. 301, 306, 125 N. E. 258. Generally, the power to punish for contempt is discretionary, one that should be exercised sparingly and only when

necessary to prevent actual, direct obstruction of, or interference with, the administration of justice. 17 C. J. S. Contempt sec. 57. Within these limits, dealing with contempts is within sound judicial discretion, subject to the provisions of law; and a trial court's determination with regard to alleged violations are final, unless there is a plain abuse of discretion. *Janov* v. *Janov,* 60 Ill. App. 2d 11, 207 N. E. 2d 691; *People* v. *Kizer,* 151 Ill. App. 6; *Engleman* v. *Engleman,* Colo. 358 P. 2d 864 (1961); *Fagan* v. *Timmons,* 224 S. C. 286, 78 S. E. 2d 628. From the contents of this record, we conclude that it was not abuse of discretion for the trial judge to order proceedings against only Swenson and Union even though other individuals may have engaged in the same conduct.

This brings us to defendants' contention that the evidence did not prove them guilty of contempt.

Concerning the quality of the evidence, defendants contend that much of it was erroneously admitted. One part of this contention concerns the testimony of Robert Nolte, a Chicago Tribune reporter who was present at Union's membership meeting of November 30. Nolte testified he heard Swenson say that the injunction was a "union busting device"; that they [Board's teachers] would not go back to work on Thursday, Friday or Monday until a binding collective bargaining agreement was reached with the College Board; that the pickets would continue to march; that he and other members of Union were prepared to go to jail, if necessary. Nolte was then shown a Chicago Tribune article of December 1. He said it contained information he telephoned to his newspaper concerning events at the meeting. Nolte said that the article truly and accurately contained the statements made by Swenson. The article was offered in evidence; and defendants objected "on the grounds of relevancy." The objection was overruled and the article admitted as petitioner's exhibit 1.

In this court, defendants shift ground and argue that the ruling admitted prejudicial hearsay. This argument misconceives Nolte's testimony and the meaning of hearsay evidence. The article was shown Nolte to refresh his recollection of what occurred at the meeting. It was not used to prove the truth of what was said in it. If anything, the article was only cumulative of Nolte's uncontested testimony. *Hester* v. *Goldsbury,* 64 Ill. App. 2d 66, 212 N. E. 2d 316.

The other part of the same contention is that prejudicial error was committed when the trial judge admitted in evidence a letter of December 21, 1966 from Swenson to the members of Union. Defendants complain that in finding them guilty, the trial judge made reference to this letter. They argue that because the rule did not allege facts concerning the letter of December 21, the evidence was beyond the scope of the rule, resulting in denial of notice and opportunity to be heard. Thus, defendants argue, they were denied due process of law.

The letter of December 21 was one of six exhibits admitted in evidence by agreement. When the trial judge inquired if there was any objection to them, counsel for defendants said, "Your Honor, I am not sure we are straightened out. In part, I am objectiong. What I am saying is that all these documents should be introduced in evidence." The trial judge then said, "They are received in evidence there being no objection." Now, defendants argue that admission of this letter deprived them of constitutional rights.

A proceeding to determine whether a party is in contempt may be commenced by a petition; but the alleged contemptuous acts need not be set out with the same detail as is required in a criminal information or indictment. *Hake* v. *The People,* 230 Ill. 174, 82 N. E. 561. With

regard to particularity of allegations in a petition for contempt, the rules of civil practice control. *Daniel Boone Woolen Mills et al.* v. *Laedeke,* 238 Ill. App. 92; *American Zinc* v. *Vecera,* 338 Ill. App. 523, 88 N. E. 2d 116. The letter of December 21 was not admitted to prove what defendants did on that day; it was an admission by Swenson, binding on Union. The letter disclosed what defendants did during the period under inquiry: November 30 to December 5, 1966. The significant part of the letter was "[w]e are entitled to the same rights enjoyed by private employees; and that we must strike if necessary to guarantee the protection of these rights. We will not be cowed now or in the future by an arrogant Board that refuses to bargain in good faith, or by the threat of an injunction." Thus, this letter tended to prove that after issuance of the injunction, defendants were of a mind to violate it. Therefore, neither admission in evidence of the newspaper article nor of the letter dated December 21, 1966 was error.

Concerning the quantity of the evidence, defendants, proceeding on the theory that the contempt here, if anything, was a civil one, contend that it did not prove them guilty. They argue that the crucial evidence was Robert Nolte's testimony of Swenson's speech of November 30 and the letter of December 21. The former, they say, was not sufficient because Nolte could not recall Swenson's speech and had to rely on the news article; the latter, they insist, was exercise of free speech by Swenson.

This argument does not take into account the testimony of John William Gianopulos, Assistant to the Chancellor of the Chicago City College who testified that on December 1, 1966, outside his office at 64 East Lake, Chicago, he saw pickets, members of Union. One of the persons picketing was the defendant Swenson, with a placard in his hand. Nor does it include the testimony of Thomas O'Malley, a Chicago police officer who swore that on December 1, 1966

he went to the offices of Board and saw approximately 40 adults, members of Union, picketing with placards. One of those picketing was Swenson who explained to O'Malley that members of his Local were negotiating a contract with Board. Swenson according to O'Malley said that other schools of Board were going to be picketed.

Of particular significance, we think, are the six exhibits. These were letters sent by Swenson stating Union's position and its determination to strike against Board. A letter of December 5, 1966 told its members of the significant Union victory won as a result of the strike. It said: "This is a victory of which we can all be proud. We won from Board everything we struck for. In addition, the Board has offered us as initial evidence of its future good faith some initial concrete counter-proposals to our proposed contract." When read together, these exhibits, all admissions by defendants, tended to show that after the temporary injunction issued, defendants engaged in the strike that was enjoined.

Affidavits in suport of the rule disclosed that as a result of defendants' conduct, between 66% and 85% of Board's teaching staff did not report for work on December 1 and 2, 1966. Classes were cancelled; students were denied education. The recited evidence, none contradicted by defendants, proved beyond a reasonable doubt that defendants were guilty of contempt of court. *In Re Block,* 50 N. J. 494, 236 A. 2d 589 (1967); *City of New York* v. *DeLury,* 23 N. Y. 2d 175, 243 N. E. 2d 128 (1968); *Board of Education of City of New York* v. *Shanker,* 54 Misc. 2d 941, 283 N. Y. S. 2d 584 (1967). The fines and sentence of imprisonment which the trial court imposed manifest exercise of reasonable discretion. The judgment is affirmed.

AFFIRMED.

DRUCKER, *J.* and ENGLISH, *J.*, Concur.

APPENDIX C.

SUPREME COURT, STATE OF ILLINOIS.

Court Convened at 9:30 A.M., Monday, October 5, 1970.

The following list of cases on the Leave to Appeal Docket, showing disposition thereof, was handed to the clerk:

No. 43502—Board of Junior College District No. 508, County of Cook, etc., respondent, *vs.* Cook County College Teachers Union, Local 1600, et al., etc., petitioners. Appellate Court, First District.

PETITION FOR LEAVE TO APPEAL DENIED.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

MOTION FOR LEAVE TO FILE ADDENDUM TO PETITION FOR WRIT OF CERTIORARI INSTANTER AND ADDENDUM.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199.

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

MOTION FOR LEAVE TO FILE ADDENDUM TO PETITION FOR WRIT OF CERTIORARI INSTANTER.

Now come the Petitioners, Cook County College Teachers Union, Local 1600, et al., by its attorneys Arnold E. Charnin, Kleiman, Cornfield and Feldman, and requests leave to file the attached Addendum to the Petition for Writ of

Certiorari to the Supreme Court of the State of Illinois, instanter, based on two Opinions of the United States Supreme Court which issued on January 20, 1971, and on January 25, 1971, subsequent to the filing of the Petition herein on January 4, 1971:

The Opinion in *Mayberry* v. *State of Pennsylvania*, ... U. S. ....., 39 LW 4133 (No. 121, October Term, 1970, January 20, 1971), directly concerns and may be dispositive of one of the major issues raised by the instant case, that is, whether a contemnor was entitled under the Fourteenth Amendment's Due Process Clause to a trial before another judge on the contempt charges. In the instant case, the Petitioners were denied change of venue on the contempt charges based on facts similar to those raised in the *Mayberry* case wherein this Court vacated the finding of contempt and remanded the matter for a new trial.

The Opinion in *Groppi* v. *State of Wisconsin*, ... U. S. ....., 39 LW 4150 (No. 26, October Term 1970, January 25, 1971) similarly involved the right of a defendant to a change of venue in a criminal misdemeanor case under the Due Process Clause of the Fourteenth Amendment right of trial by an impartial jury or in a fair tribunal.

The *Mayberry* and *Groppi* Opinions having issued subsequent to the filing of the instant Petition could not be cited therein, but are necessary for a determination of the issues raised by the Petition.

Respectfully submitted,

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10 South La Salle Street,
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Chicago, Illinois 60603,
Attorneys for Petitioners,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199.

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

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Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT No. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

ADDENDUM TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REASONS FOR GRANTING THE WRIT.

Petitioners were denied a fair trial by the denial of the petitions for change of venue on the contempt charges.

As demonstrated by the Statement of the Case, on November 30, 1966, the Board of Junior Colleges, District 508 (the Board), filed a Complaint for Declaratory Judgment and Injunction in the Circuit Court of Cook County, Illinois, and on that same date the Board obtained a temporary injunction, *ex parte,* prohibiting a strike or other withholding of services by Petitioners. On December 20, 1966, the Board moved the trial court to dissolve the temporary injunction, alleging *inter alia* an agreement on the major terms of a collective bargaining agreement. The trial court refused to dissolve the injunction and ordered the issuance of a Petition for Rule to Show Cause. At the same time the trial court was reported to have said in various newspapers that recent similar instances "indicate too much coddling and not enough paddling". Thereafter the Board sought to withdraw from the case. The court solicited other counsel to proceed with the Rule to Show Cause. As soon as the court obtained other counsel, Petitioners filed a Petition, in proper form, for change of venue, alleging the prejudice of the trial judge. A second Petition for Change of Venue was filed after the issuance of an Amended Rule to Show Cause. Both Petitions were denied and ultimately a hearing was conducted before the same trial court which denied the change of venue and which caused the Rule and Amended Rule to issue.

As demonstrated by the Amended Rule to Show Cause and final Order of the trial judge, the trial court based its finding of contempt and punishment on the violation of its injunction order and on certain statements by Norman Swenson, President of the Union, on November 30, 1966, to the effect that "the court injunction is a typical union-busting device" and on December 21, 1966, in a news bulletin which stated "the Board miscalculated and thought we would be broken by an injunction. Now Judge Covelli

has taken the position that we should be punished in spite of the fact that the Board's attorneys sought dissolution of the injunction. It is unheard of for a judge to refuse to dissolve an injunction when the complaining party assures the court that the matter is settled. What can we do to help the Union and blunt the effect of this vindictive attack? 1. Write or phone Judge Covelli, Mayor Daley, . . ."

The finding of contempt, as demonstrated by the trial court Order, appears to be based on the violation of an injunction order entered for the purpose of preventing irreparable injury to the Board. Nevertheless, the Order demonstrates that the court was primarily concerned with the comments of Mr. Swenson directed to the court rather than the Board. In essence the trial judge formed an early and premature opinion that strikes or picketing by public employees had been resolved by other courts on the basis of coddling rather than paddling the public employee. The trial court published this position prior to and without having heard any of the facts, equities or legal arguments of the Petitioners. The trial court pursued the matter of contempt, although faced with a demand for change of venue, at a time when the Board no longer had interest in either the paddling of teachers nor in securing compliance with the trial court's injunction order. Indeed, the matter was then moot. From the very nature of the Order it is evident that the trial court sought judicial reprisal for comments which it felt reflected upon the court rather than to prevent any irreparable injury to the Board. The trial court's feelings became irrevocably intermixed with the case from the time that it expressed its political disapproval of other courts' actions, to the time that it issued its Order complaining of comments directed to the court.

Petitioners were entitled to a change of venue to another judge when the trial court evidenced its prejudice and pur-

sued the contempt because its feelings became intertwined with the issue of compliance with its order.

In *Mayberry* v. *State of Pennsylvania*, ... U. S. ....., 39 LW 4133 (No. 121, October Term 1970, January 20, 1971), the Petitioner was found guilty of contempt for abusive, insulting and slanderous comments made to the judge during the course of the trial. However, the trial court imposed punishment for such contempt subsequent to the trial, and, therefore, not for the purpose of preventing such contemptuous conduct.

This Court found that where the judge does not act the instant the contempt is committed, but waits until the end of the trial, that it is generally wise where the marks of the unsuitable conduct have left personal stings, to ask a fellow judge to take his place. The judgment of contempt was vacated so that on remand another judge, not bearing the sting of the slanderous remarks, and having the impersonal authority of the law, would sit in judgment on the conduct of the petitioner.

The same principle applied by this Court in the *Mayberry* case was asserted by the Petitioners in their Petition for a Writ of Certiorari, wherein Petitioners cited this Court for the proposition that "justice must satisfy the appearance of justice". In *Mayberry*, as in the instant case, the court did not issue its finding of contempt for the purpose of securing the Petitioners non-interference with the course of the trial before it. In each case the court sought punishment at a time when the question of contempt could readily have been presented to another trial judge not personally affected by the comments of the Petitioners. In each case the question arises as to whether the action of the court in finding the contempt was based on personal involvement with the Petitioners and thus justice did not satisfy the appearance of justice. In the

instant case, justice was even less satisfied than in *Mayberry* because of the prejudicial comments of the court made before any contempt proceedings were instituted. In effect, the trial court determined upon punishment before evidence of the fact, appointed a friend of the Court to prosecute the matter and then found in its friend's favor. The whole atmosphere of the proceedings thereby became tainted with the attempt to secure reprisal.

In the *Mayberry* case, this Court stated that "Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in a criminal contempt proceeding should be given a public trial before a judge other than the one reviled by the contemnor."

The Petitioners claim that same right.

In *Groppi* v. *State of Wisconsin,* 39 LW 4150 (No. 26, October Term 1970, January 25, 1971), the defendant sought a change of venue from the county in a criminal case, alleging the prejudice of the community. This Court held that the Fourteenth Amendment guarantees the right to trial by an impartial jury and that the defendant was therefore entitled to show that a change of venue was required in his case. Accordingly, the judgment was vacated and the case remanded for further proceedings not inconsistent with the Court's opinion.

Thus, in the *Groppi* case this Court reaffirmed the principle that a defendant in a criminal proceeding may be entitled to a change of venue upon alleging the prejudice of the court or community, and in the *Mayberry* case this Court affirmed the principle that due process may require change of venue in a criminal contempt proceeding particularly where the contempt is directed to the court.

Applying these principles to the instant case, the Petitioners are entitled to a change of venue in a criminal contempt proceeding involving an alleged contempt directed

to the court where the prejudice of the court is alleged as the basis for the change of venue. Petitioners were denied a fair trial by the denial of the petitions for change of venue, and this denial of due process requires that the finding of contempt be reversed.

Respectfully submitted,

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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Supreme Court, U.S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1970

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

and

NORMAN G. SWENSON, President;
DAVID SIMONSON, Asst. to the President;
HOWARD A. JAMES, Vice President;
LEON NOVAR, Member of Negotiating Committee,
as Individuals, as Officers of said Union and as Members and Representatives of the Class of Members of said Union,
Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 58, COUNTY OF COOK AND STATE OF ILLINOIS,
Respondent.

BRIEF OF RESPONDENT JAMES L. COGHLAN, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1199

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

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NORMAN G. SWENSON, President;
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BOARD OF JUNIOR COLLEGE DISTRICT NO. 58, COUNTY OF COOK AND STATE OF ILLINOIS,
Respondent.

BRIEF OF RESPONDENT JAMES L. COGHLAN, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

James L. Coghlan, *amicus curiae,* by James P. Chapman, his attorney, respectfully states that the instant petition should be denied for the following reasons:

1. Whether the temporary injunction was proper and whether the Illinois Anti-Injunction Act applies to strikes by teachers of public colleges are questions immaterial to

the validity of the contempt judgment entered against petitioners (answer to petition, points 1-6, pp. 14-22). Thus, *Walker* v. *City of Birmingham*, 388 U.S. 307 (1967) holds that on appeal of a contempt order for violation of a temporary injunction, petitioners cannot collaterally attack the validity of the injunction itself where the court had jurisdiction of the parties and the subject matter.

Petitioners claim *Walker* should not control because the alleged application of the Illinois Anti-Injunction Act would deprive the court of jurisdiction of the subject matter (petition, pp. 20-21).

Assuming the Act would apply to this case, petitioners' conclusion does not follow. In *County of Peoria* v. *Benedict*, 47 Ill. 2d 166, 265 N.E. 2d 141 (1970), cited by petitioners (petition, p. 21), this exact situation occurred. The Illinois Supreme Court held that the Act applied to county nursing home employees and reversed an injunction which prohibited strikes. However, the court affirmed contempt convictions for violation of the erroneous injunction, citing *Walker* and several Illinois Supreme Court decisions. "[W]here employees believe an injunction may have been improvidently issued they must first seek and obtain a judicial determination of its legality, and cannot disregard its mandate or violate its prohibitions with impunity. • • • [W]hile an unconstitutional [order] is a nullity, and may not form the basis of any legal right or proceeding, yet, until its constitutionality has been judicially declared in appropriate proceedings no person charged with its observance, • • • may disregard or violate the order with immunity from a charge of contempt of court." (265 N.E. 2d at 143-44).

2. Petitioners' argument that all labor injunction contempts have previously been considered civil in nature

and that therefore no prison sentence or fine can be imposed is incorrect (petition, point 7, p. 22).

Certain early Illinois decisions refer to labor injunction contempt proceedings as civil in nature. But in context this description refers only to certain procedural rules no longer applicable and do not concern the *power* of the court to punish for contempt.

The Appellate Court cited several recent Illinois Supreme Court decisions which demonstrate that contempt proceedings are *sui generis* and that labels of "criminal" and "civil" are immaterial. The essential point is that a trial court in *any* type of proceedings may use its contempt power to (1) vindicate the authority and dignity of the court, although the parties have settled their differences and (2) to effect compliance with earlier orders. The Appellate Court held that the trial judge properly used his contempt power under category one (petition, A11-13).

Even the early labor injunction cases petitioners cite (petition, p. 22) imposed "criminal contempt" type or punitive sentences—that is, "imprisonment for a definite term, fine for a certain sum of money" as opposed to a "remedial or coercive measure: commitment of a contumacious party until he complies with the mandate of the court, a fine until there is obedience to the court's order * * *." (Appellate Court opinion; petition A11-12.) See for example, *O'Brien* v. *People,* 216 Ill. 354, 75 N.E. 108, 113-14 (1905) (Significantly, the rule of the *Walker* case was also applied in *O'Brien* (75 N.E. at 113)).

3. It was proper for the trial judge to hear the contempt proceedings himself rather than cause the matter to be assigned to another judge (answer to petitioners' point 8, petition, p. 24 and addendum to petition). This

Court in *Ungar* v. *Sarafite,* 376 U.S. 575 (1964) stated that a judge should transfer contempt proceedings to another judge only if the contumacious conduct creates a judicial "bias, or such a likelihood of bias, or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused." (376 U.S. at 588). In *Ungar,* the witness in the presence of the trial judge refused repeatedly to answer questions despite the court's orders that he do so, engaged in extended argument with the trial judge, and was guilty of other lengthy and improper behavior. Yet, the Court held that the trial judge properly denied the witness' request for a change of venue in the subsequent contempt proceedings.

In the Court's recent opinion of *Mayberry* v. *Pennsylvania,* 39 L.W. 4133, (1971) defendant made repeated and personal vitriolic attacks upon the trial judge in his presence. The record disclosed a great risk that the trial judge unwittingly would be emotionally and prejudicially affected by these intemperate statements—"insults of that kind are apt to strike at the most vulnerable and human qualities of a judge's temperament". Due process required that the contempt proceedings be assigned to another judge "not bearing the sting of these slanderous remarks and having the impersonal quality of the law * * *." (39 L.W. at 4136).*

---

* *Groppi* v. *State of Wisconsin,* 39 L.W. 4150 (1971) addendum, p. 7) is not in point. There the Court held that a Wisconsin statute which *absolutely* deprived a defendant of a change of venue in any misdemeanor case, deprived him of his Fourteenth Amendment right to an impartial trial by jury. The court remanded the proceeding to give defendant "an opportunity to show that a change of venue *is* required in *his* case." (emphasis the Court's) (39 L.W. at 4151).

The facts in the instant case are far different from those in *Mayberry*. The contumacious conduct of petitioners occurred totally outside the presence of the trial judge; there was no "person to person" exchange. The essence of the contempt order (petition, A1) was petitioners' admitted violation of the temporary injunction —that is, with full knowledge that a temporary injunction had been entered enjoining them from a strike, petitioners intentionally caused a strike to occur anyway. The order was not based upon any other utterances of statements by Swenson or the Union.

Petitioners' reference to alleged statements by the trial judge that there had been "too much coddling and not enough paddling" is so vague and indefinite as to be of no evidentiary worth whatsoever (petition, p. 24; addendum, p. 4). This alleged statement, supposedly appearing in an unspecified context in an unspecified newspaper (see petitioners' Abstract of Record, p. 65), was not incorporated or described in petitioners' petitions for change of venue or introduced as evidence at the contempt trial itself. It should be disregarded now.

In any event, this statement does not reflect the trial judge's reaction or prejudice to the type of contumaciously personal attack which *Mayberry* states requires another judge to hear the contempt proceedings. That type of contumacious conduct simply did not occur in this case.

In retrospect, the dispassionate and orderly procedures employed by the trial judge with regard to petitioners' contempt proceedings demonstrate an objective and fair approach.

Rather than holding immediate and summary hearings, the trial judge appointed an *amicus curiae*, a well known

and highly respected Chicago trial lawyer, to investigate the facts regarding possible contempt, and acted only after a written report was filed by the *amicus curiae* with the court. (petition, A5)

Petitioners were given complete details about the charges against them, an opportunity to file an answer and a full hearing many months after the alleged contempt occurred. Significantly, petitioners offered no evidence in their defense. (petition, A6).

Other reasons under Illinois law as well as the law of all other states support the denial of petitioners' change of venue request. As the Illinois Appellate Court points out, (petition, A13-15), the change of venue petitions were filed 23 days after petitioners say they learned of the trial judge's alleged prejudice and only after there had been several substantive rulings in the case. In other words, petitioners requested a change of venue after it became apparent to them that the trial judge was not going to ignore their violations of his injunction order.

For all of the reasons stated above, it is respectfully submitted that the subject petition should be denied.

Respectfully submitted,

JAMES P. CHAPMAN
Attorney for James L. Coghlan,
Amicus Curiae

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1199

COOK COUNTY COLLEGE TEACHERS UNION, LOCAL 1600,

AND

NORMAN G. SWENSON, PRESIDENT; DAVID SIMONSON, ASST. TO THE PRESIDENT; HOWARD A. JAMES, VICE PRESIDENT; LEON NOVAR, MEMBER OF NEGOTIATING COMMITTEE, AS INDIVIDUALS, AS OFFICERS OF SAID UNION AND AS MEMBERS AND REPRESENTATIVES OF THE CLASS OF MEMBERS OF SAID UNION,

Petitioners,

vs.

BOARD OF JUNIOR COLLEGE DISTRICT NO. 508, COUNTY OF COOK AND STATE OF ILLINOIS,

Respondent.

REPLY BRIEF OF THE PETITIONER TO THE BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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The Petitioners, by Arnold E. Charnin, Kleiman, Cornfield and Feldman, their attorneys, hereby files its Reply to the Brief of Respondent opposing the Petition for Writ of Certiorari to the Supreme Court of the State of Illinois.

This Reply Brief is not intended as a reargument of those matters raised in the Petition or opposed in the Respondent's Brief. However, there is a statement contained in the Respondent's Brief which may cause a misapprehension of the facts and requires this clarification.

The Petitions for Change of Venue filed in the trial court demanded change of venue. Such petitions followed the traditional and statutory form for all such petitions filed in the Illinois courts, and neither required nor traditionally specify the cause or the reasons for change of venue other than the allegation of prejudice of the trial judge. Both petitions were verified. No hearing is accorded or requested upon the filing of such petitions.

Upon completion of the trial and sentencing by the trial court, the Petitioners moved for a new trial specifying as a ground thereof the failure of the trial court to allow the change of venue. In such Motion the Petitioners asserted that the allegation of prejudice of the judge was based *inter alia* on statements made by the Court to the newspapers to the effect that there had been "too much coddling and not enough paddling" of teachers. Copies of the news articles were appended to the Motion as Exhibits A (*Chicago Sun-Times*, December 21, 1966), B (*Chicago Tribune* Editorial, December 21, 1966), and C (*Chicago Tribune*, December 21, 1966). Thus, contrary to the allegations in the Brief of Respondent herein, the prejudice of the trial court was revealed and was presented by Motion to the trial court during the proceedings therein.

Accordingly, the Petitioners did contend and are contending that they were denied a fair trial by the denial of

the petitions for change of venue, and were denied due process therefor.

Respectfully submitted,

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